IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1914 OF 2003

Kirloskar Investments & Finance Ltd. & Ors. .. Petitioners.
Vs.
Silikon Silk Mills (Exports) Ltd. .. Respondents.

Mr.Nitin Pradhan i/b Mr.S.D.Khot for the petitioners.
Mr.G.R.Sharma i/b Mr.Girish Kulkarni for respondent no.1.
Mrs.M.H.Mhatre A.P.P. for the State.

CORAM : D.B.BHOSALE, J.
DATED : 27TH JUNE, 2006

P.C.:

. Heard learned counsel for the parties.

2. The petitioners in the instant petition have prayed for quashing of the entire case in CR.M.A.NC.34/2002 pending before the Court of Judicial Magistrate, I Class at Daman filed by the respondent no.1 and also the summons issued by the learned Magistrate for the offence punishable under section 320 read with 109 of the I.P.C. against the petitioners. This litigation has a checkered history, however, I do not deem it appropriate to make detailed reference to it since the learned counsel appearing for the parties have agreed for the order that I propose to pass in this petition.

3. It appears that some depositors and secured creditors had filed company petitions against petitioner no.1 - company. In

that group of writ petitions, the High Court of Karnataka on 8.8.2001 passed the orders by which the committee was appointed in view of the serious allegations of misfeasance and inefficiency on the part of the management of the company to look after the affairs of the company and to see if the company can mobilise resources to repay the depositors and secured creditors. The relevant paragraphs in the said order of the High Court reads thus:

> "29. It is in these circumstances that a broad consensus has been arrived at to form a committee of eminent persons to manage the affairs of the company. Even with regard to the name of the persons of the committee, there is broad agreement.
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> 30. After getting their consent, Hon'ble Justice K.A.Swamy, Former Chief Justice of Madras High Court and the permanent resident of Bangalore and Dr.K.Srinivasan, Former Director General of Police, Karnataka are appointed as members of the Committee to look after the affairs of the company.
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> 31. They will be entitled to look into all aspects with regard to the affairs of the company. Hon'ble Justice K.A.Swamy shall be the Chairman of the committee and Dr.K.Srinivasan shall be the member of the committee. The committee is at liberty to formulate a scheme for payment of depositors. They are also permitted to negotiate with the Banks (Secured Creditors) for arriving at an out of Court settlement. They are also permitted wherever possible to carry on the business of the company. The committee is entitled to incur all expenditure in pursuance of their task. The committee is also directed to engage Lawyers, pay for their fees with respect to recovery of outstanding amounts owing to the company and such other legal work that may be necessary to run the company. The company is also permitted to engage Accountants, Chartered Accountants and to

employ the staff on an Adhoc basis."

3. The parameters of working of the committee were also mentioned in paragraphs 40 to 43 of the order. The committee, accordingly, took over the affairs of the petitioner no.1 - company. The members of the committee had no connection whatsoever with the company before their appointment. It is against this backdrop the present writ petition has been filed against the order of issue of process and for quashing of the case filed by the respondent-complainant. Mr.Sharma, learned counsel for respondent no.1 states that when they filed complaint bearing Cri.M.A.No.34/2002, the complainant was not aware about the status of petitioner nos.2 to 4 and in what circumstances they came to be appointed by the High Court. In view thereof Mr.Sharma, on instructions, fairly stated that the complainant will withdraw the complaint against petitioner nos.2 to 4 by filing a formal application before the concerned Magistrate within two weeks from today. In the circumstances I pass the following order:

(i) The statement of Mr.Sharma, learned counsel for the respondent-complainant, that the complainant will withdraw the complaint against petitioner nos.2 to 4 by filing formal application before the concerned Magistrate within two weeks from today is accepted.

(ii) The complainant is directed to file an application as stated by their counsel within two weeks from today.

(iii) The application, that will be filed by the complainant before the concerned Magistrate seeking permission to delete the names of petitioner nos.2 to 4 from the array of the accused may be allowed.

(iv) The learned Magistrate shall not insist presence of petitioner nos.2 to 4 in the Court for any purpose whatsoever while passing the order on the said application.

(v) It is open for the complainant to prosecute the complaint further against other accused if so advised.

. The petition, accordingly, stands disposed of in the aforesaid terms.

(D.B.Bhosale, J.)